

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

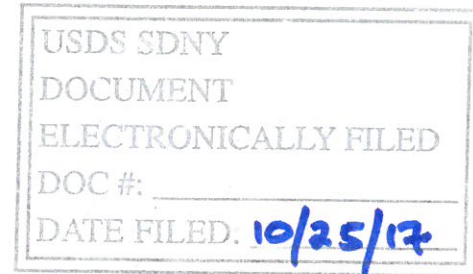
JOHN COTTAM,

Plaintiff,

-v-

6D GLOBAL TECHNOLOGIES, INC., *et al.*,

Defendants.



No. 16-cv-4584 (RJS)
ORDER

RICHARD J. SULLIVAN, District Judge:

On June 16, 2016, Plaintiff commenced this action alleging breach of contract, securities fraud under Section 10(b) of the Securities Exchange Act and Rule 10b-5, breach of fiduciary duty, and aiding and abetting a breach of fiduciary duty.¹ (Doc. No. 1.) On July 11, 2017, the Court denied Defendants' motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), finding that the contract at issue is not ambiguous. (Doc. No. 43.) Since that time, however, Defendants have obtained new counsel, answered the Complaint, and asserted a new theory of the case through counterclaims for mutual mistake and unilateral mistake. (*See* Doc. Nos. 58, 68.) Plaintiff, for his part, has filed several motions, including a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 and a motion to dismiss Defendants' counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. Nos. 60, 82.)

Because the Court cannot say, based on the pleadings alone, that Defendants have failed to state a claim for mutual or unilateral mistake, Plaintiff's motion to dismiss the counterclaims must be DENIED. Additionally, because Defendants have reasonably requested limited discovery on

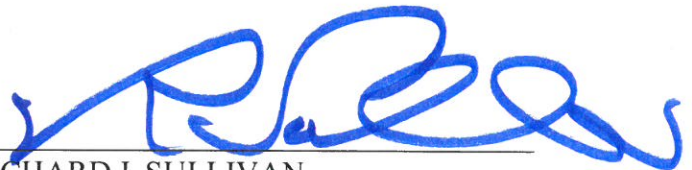
¹ Plaintiff voluntarily dismissed Defendant William Uchimoto on August 11, 2016 and Defendants Global Emerging Capital Group, LLC and Alexander Kibrik on August 16, 2017 in order to pursue arbitration against those parties. (Doc. Nos. 31, 32.) Plaintiff's claims against the remaining Defendants are for breach of contract and securities fraud.

the issues related to their counterclaims and claim for reformation of the contract at issue in this case (*see* Doc. No. 79 at 17–22), Plaintiff’s motion for summary judgment must also be DENIED, without prejudice to renewal after the conclusion of discovery related to Defendants’ counterclaims. IT IS HEREBY ORDERED that, by Friday, November 3, 2017, the parties shall submit a proposed case management plan and scheduling order for the discovery required for Defendants’ counterclaims, as discussed above. The parties shall use the template for the order available at: <http://www.nysd.uscourts.gov/judge/Sullivan>.

The Clerk of Court is respectfully directed to terminate the motions pending at docket numbers 60 and 82.

SO ORDERED.

Dated: October 25, 2017
 New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE